IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2916 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOMLAL NARANDAS PANCHAL

Versus

THE REGISTRAR CO-OPERATIVE SOCIETY,

Appearance:

MR UNWALA for MR P.K.JANI for Petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/06/2000

CAV JUDGEMENT

1. Heard learned counsel for the petitioner. Though it is not stated in this Special Civil Application that the petitioner is the member of the Mahakali Co-operative Housing Society Ltd., Patan, District-Mahesana respondent no.3, but from the material produced on the record, I

find that he is a member of the society. In this Special Civil Application the prayer has been made to give direction to the concerned respondent for removing the construction alleged to be illegally permitted to be made by the administrator of the society on society land. The further prayer is made that pending hearing and final disposal of this petition, the respondent no.1 and 2 be directed to decide the representation of the petitioner which is at Annexure-G to the petition. Next prayer is made to give direction to the Patan Municipality for removing all unauthorized constructions made on the society land.

2. The way and the manner in which this petition is drafted and framed is difficult to appreciate. It is a case where the petitioner made all the attempts to conceal and deliberately not disclosed all the material facts in the petition. If we go by the petition and documents enclosed thereto, the petitioner's grievances appears to be against the illegal construction made by the members of the society. Who are those members of the society, alleged to have made illegal construction has not been mentioned. Not only this those members have not been joined as a party to this petition. Behind the back of those persons, in case any relief is granted to the petitioner as prayed, they are likely to be affected. The petitioner has made an attempt to get a decision in his favour against those undisclosed persons. This approach of the petitioner is totally against the fair play and principles of natural justice. In fact, it is an attempt on the part of the petitioner to abuse the process of the Court. The petitioner has projecting as if those undisclosed members of the society, have made the illegal construction and made prayer for removal of the same. This prayer cannot be granted behind the back of those affected persons. It is to be stated that this attempt of the petitioner to get a decision behind the back of those affected persons, amounts not coming before this Court with clean hands. This conduct of the petitioner itself is sufficient for the dismissal of this petition. Otherwise also if the members of the society are making any illegal or unauthorized construction, the petitioner has an appropriate alternative remedy of filing of the suit before the Board of Nominees. The petitioner instead of adopting this course which is in accordance with the rule of fair play and principles of natural justice is making all attempts to get favourable decision from this Court against these undisclosed persons. The petitioner cannot be permitted to do all these under Article 227 of the Constitution. This, extra ordinary equitable jurisdiction of this Court, is meant

only for those litigants who are fair, honest and come with clean hands. To such litigants who try to play tricks with the Court and made an attempt to get the decision behind the back of the affected persons, this Court will not grant any relief under its extra ordinary equitable jurisdiction in their favour.

2. In the result, this Special Civil Application fails and same is dismissed. Interim relief, if any, granted stands vacated.

(S.K.Keshote, J)

(Vipul)